

INITIAL STATEMENT OF REASONS
FOR THE ADOPTION OF RULES UNDER THE
CALIFORNIA FINANCE LENDERS LAW

As required by Section 11346.2 of the Government Code, the California Corporations Commissioner ("Commissioner") sets forth below the reasons for the adoption of Sections 1422 and 1423 to Article 2 of Subchapter 6 of Chapter 3 of Title 10 of the California Code of Regulations. (10 C.C.R. Sections 1422 and 1423.)

Under the California Finance Lenders Law ("CFL"), the Department of Corporations ("Department") licenses and regulates finance lenders and brokers conducting business in this state. The CFL provides that no person shall engage in the business of a finance lender or broker without obtaining a license from the Commissioner. (Financial Code Section 22100.) The CFL further provides that the application for a finance lender or broker's license shall be in the form and contain the information that the Commissioner may by rule require. (Financial Code Section 22101, subdivision (a).) The Commissioner may also establish a short form application and procedure for use by a licensee with one or more licensed locations who is seeking an additional location license. (Financial Code Section 22102.)

The Department's application form is used by applicants seeking to become licensed as finance lenders or brokers. The form is available to the public either at the Department's offices or on its web site at www.corp.ca.gov. However, this form has not been formally adopted as a regulation pursuant to the Administrative Procedure Act ("APA"). (Government Code Section 11370, et seq.) Nor has a short form application been adopted as a regulation.

Accordingly, in order to comply with the APA, the Department proposes to add Section 1422 to Title 10, Chapter 3, Subchapter 6, Article 2 of the California Code of Regulations, the text of which will be the "Application For a License Under the California Finance Lenders Law." The Department further proposes to add Section 1423 to this title and chapter, to enable applicants who qualify to file a short form application for licensure with the Department.

It is noteworthy this rulemaking is a product of a departmental work group comprised of industry representatives and experienced staff, and convened for the purpose of reviewing and developing the application forms which are not being adopted as regulations.

I. PROPOSAL TO ADD TITLE 10, CHAPTER 3, SECTION 1422 TO THE CALIFORNIA CODE OF REGULATIONS

Section 1422 contains the “Application for a License Under the California Finance Lenders Law” (“Application”). Generally, the application form needs to be added to the regulations because it has not been adopted as required by the APA, and is not contained elsewhere in the CFLL or regulations. More specific reasons for the necessity of the provisions in the proposed form are discussed below.

In order for a person to engage in business as a lender and/or broker under the CFLL, an application for licensure must first be filed with the Department. (See Financial Code Section 22100.) This rule adopting the Application is necessary to ensure that the Department obtains the information needed to make a determination that the applicant meets the specified requirements for licensure under the CFLL, and to provide the applicant notice of the information that will be necessary for the Department to make such a determination. Additionally, Financial Code Sections 22101, subdivision (a), and 22102 expressly authorize the Department to set forth the form of the application by regulation.

The information requested in items 1 through 4 of the Application relates to general information about the applicant, including the applicant’s name and fictitious business name, the form in which the applicant plans to conduct business, and the location of the applicant’s place of business. Existing law does not require applicants to submit this information to the Department. This general information is necessary to provide a means by which the Department may obtain identifying information about the applicant and information about the form and location of the applicant’s business. (As examples, see Financial Code Sections 22106 [name of licensee, address, whether applicant is corporation or partnership]; 22153 [change of place of business]; 22154 [business conducted at location where other business is conducted]; and 22155 [name of business].)

The information in item 5 is requested for an applicant operating as a partnership, and concerns the date of organization of the applicant, the state in which it was organized, and the names and addresses of each general partner. Existing law does not require applicants to submit this information to the Department. The requested items are necessary to provide the Department with identifying information about the applicant and about those persons responsible for the operation and management of the applicant, so that the Department can conduct a meaningful investigation of such persons prior to their engaging in business with consumers in this state. The items requested are also necessary to provide the Department with information needed to facilitate communication with the applicant and those in charge of its operations and management. (See Financial Code Section 22106, for example.)

The information in item 6 is requested for an applicant operating as a corporation, trust, limited liability company, or other entity, and concerns the date of organization of the applicant and the state in which it was organized. Item 6 further requests the names of the officers, directors, managers/members, trustees, and persons owning or controlling ten percent or more of the applicant, and the name, business address, telephone number and e-mail address of each person who will be in charge of the place of business. Existing law does not require applicants to submit this information to the Department. The requested items are necessary to provide the Department with identifying information about the applicant and about those persons responsible for the operation and management of the applicant, so that the Department can conduct a meaningful investigation of such persons prior to their engaging in business with consumers in this state. The items requested are also necessary to provide the Department with information needed to facilitate communication with the applicant and those in charge of its operations and management. (See, e.g., Financial Code Section 22106.)

Item 7 requests information concerning any administrative action in another state to which the applicant has been subject. Existing law does not require applicants to submit this information to the Department. This information is needed to provide the Department with information concerning the background of the applicant to enable the Department to fully evaluate the suitability of the applicant for a license under the CFLL. (See, e.g., Financial Code Section 22105.)

The information requested in item 8 concerns whether there will be any business conducted on the applicant's premises for which the applicant will need to obtain the Department's authorization under Financial Code Section 22154 (business conducted at location where other business is conducted). Existing law does not require applicants to submit this information to the Department. This information is necessary to provide the Department with information needed to ensure that the applicant is in compliance with the CFLL. (See Financial Code Section 22154.)

Item 9 requests the name, address, and telephone number of the bonding agent to whom the Department can direct questions regarding the surety bond required in Exhibit B, below. Existing law does not require applicants to submit this information to the Department. This information is necessary to enable the Department to communicate with the bonding agent to ensure that the applicant is in compliance with the bonding requirements of the CFLL. (See Financial Code Section 22112.)

The information requested in item 10 concerns the applicant's proposed method of operations, including the purpose of the loan, the type of collateral, the

minimum loan amount, whether for broker licensees the loans will only be brokered to CFLL licensed lenders, and whether for finance lender licensees the source of funds will be exclusive of any funding advances from an institutional investor committed to purchasing the note. Item 10 also requests a short description of the applicant's proposed business plan. Existing law does not require applicants to submit this information to the Department. This information is necessary to provide the Department with information concerning the nature of the loans the applicant proposes to make, and the way in which the applicant proposes to conduct its business, so that the Department can ensure that the applicant is in compliance with, and is conducting its business appropriately under, the CFLL. (For example, see Financial Code Sections 22050 through 22061 [exemptions]; 22159 [reports by licensee]; and 22203-22204 [consumer loans].)

Item 11 requests information concerning the applicant's principal place of business if it is to be located outside of the State of California, as provided by Financial Code Section 22106, subdivision (b). The information requested indicates the applicant's choice of how it will make its business records available to the Department for inspection. Existing law does not require applicants to submit this information to the Department. This information is necessary to advise the Department how and where the applicant will make its records available for inspection to ensure the applicant is complying with the CFLL in the operation and management of its business. (See Financial Code Section 22106, subdivision (b).)

Item 12 concerns the Exhibits that are required to be submitted with the Application. The Exhibits contain information necessary for the Department to conduct a thorough investigation and to ensure that the applicant meets the requirements of the CFLL. Existing law does not require applicants to submit this information to the Department. The Exhibits required to be attached to the application and the more specific reasons the Exhibits are necessary are set forth below:

EXHIBIT A: A balance sheet of the applicant as of a date not more than 90 days prior to the date this Application is filed, that indicates a minimum net worth of \$25,000. This information is necessary for the Department to make a determination that the applicant meets the minimum net worth requirements of Financial Code Section 22104.

EXHIBIT B: An **ORIGINAL** surety bond, including any and all riders and endorsements in the amount of \$25,000, utilizing the instructions and surety bond form acceptable to the Department of Corporations, enclosed with the application packet. This requirement is necessary to notify applicants of their obligation to submit a bond and to enable the Department to determine whether the bond requirements of Financial Code Section 22112 have been satisfied.

EXHIBIT C: A Statement of Identity Questionnaire for each person named in Items 4, 5, & 6 of the Application. This information is necessary for the Department to investigate such persons and determine whether the applicant meets the requirements of Financial Code Section 22105.

EXHIBIT D: For individual applicants only, the form entitled "Statement of Citizenship, Alienage, and Immigration Status For Application of Department of Corporations License or Certificate." This information is needed to enable the Department to determine the citizenship status of the applicant. (See Financial Code Section 22105.)

EXHIBIT E: A completed Customer Authorization of Disclosure of Financial Records form. A person named in Item 4, 5, or 6 of this application who is authorized to sign on behalf of the applicant must sign this form. This form will enable the Department to have access to the applicant's financial information that is under the control of third parties, such as banks. This information is necessary in order for the Department to thoroughly investigate the applicant's financial standing to meet the requirements of Financial Code Section 22156. Additionally, timely access to such financial records can be crucial in certain enforcement actions the Department may be pursuing.

EXHIBIT F: For an applicant that will be doing business under a fictitious business name, a copy of the Certificate of Filing and Proof of Publication, both of which bear the County Clerk's filing stamp. The Certificate of Filing and Proof of Publication are to be filed pursuant to the requirements of the Unfair Practices Act, Business and Professions Code Section 17000, et seq. This information is needed to enable the Department to determine whether the applicant is doing business under a fictitious business name and is meeting the requirements of Financial Code Section 22155.

EXHIBIT G: Two copies of all advertising proposed to be used in connection with the business to be licensed. If none, the Exhibit should so state. This information is required to be submitted to the Department for review pursuant to California Code of Regulations Section 1550 and is necessary to permit the Department to approve or disapprove the applicant's proposed advertising.

EXHIBIT H: For an applicant incorporated in the State of California (**domestic** corporation), the following items, pursuant to the Department's authority under Financial Code Section 22101, subdivision (a):

1. An **ORIGINAL** Certificate of Good Standing or Qualification duly executed not more than sixty days before filing this application by the Secretary of State of California showing that the applicant is authorized to do business in this State. **The certificate must also indicate the original date of**

incorporation. This information is necessary for the Department to determine whether the applicant is permitted to conduct its business in the State of California.

2. A copy of the notice filed with the Department of Corporations indicating that the initial issuance of shares of stock was entitled to an exemption pursuant to Section 25102 of the Corporations Code or was qualified for issuance in some other manner, as required by Corporations Code Section 25110. This information is needed to ensure that the applicant has complied with the requirements of both the CFLL and the California Securities Law regarding the issuance of shares of stock.

EXHIBIT I: For an applicant incorporated outside the State of California (**foreign** corporation), the following items, pursuant to the Department's authority under Financial Code Section 22101, subdivision (a):

1. A Certificate of Good Standing or Qualification duly executed not more than sixty days before filing this Application by the Secretary of State of the foreign state, or other proper authority showing that the applicant is authorized to transact business in that state. **The certificate must also indicate the original date of incorporation.** This information is necessary for the Department to determine whether the applicant is permitted to conduct its business in the state in which it is incorporated.
2. A Certificate of Good Standing or Qualification duly executed not more than sixty days before filing this Application by the Secretary of State of California showing that the applicant is authorized to do business in California. This information is necessary for the Department to determine whether the applicant is permitted to conduct its business in the State of California.
3. A Consent to Service of Process, utilizing the form provided in the application packet. Service made pursuant to the terms of the consent to service of process shall have the same force and validity as if served personally on the applicant. This form is necessary to enable the Department to accept service of process on behalf of an applicant if the applicant is unable to be located.
4. The name and address of the principal agent in California. This information is necessary in order to provide the Department with a primary contact person in this state who is authorized to act for and on behalf of the applicant.

EXHIBIT J: For an applicant that is a Trust, Limited Partnership or Limited Liability Company (**domestic** business entity), an **ORIGINAL** Certificate of Good Standing, Qualification, or other document duly executed not more than sixty days

before filing this Application by the Secretary of State of California, pursuant to the Department's authority under Financial Code Section 22101, subdivision (a). The certificate must also indicate the original date of incorporation. This information is necessary for the Department to determine whether the applicant is permitted to conduct its business in the State of California.

EXHIBIT K: For an applicant that is a Trust, Limited Partnership or Limited Liability Company organized outside of the State of California (**foreign** business entity), the following items, pursuant to the Department's authority under Financial Code Section 22101, subdivision (a):

1. A certificate of good standing or qualification duly executed not more than sixty days before filing this Application by the Secretary of State of the foreign state, or other proper authority showing that the applicant is authorized to transact business in that state. **The certificate must also indicate the original date of incorporation.** This information is necessary for the Department to determine whether the applicant is permitted to conduct its business in the state in which it is incorporated.
2. A certificate of good standing or qualification duly executed not more than sixty days before the filing of this Application by the Secretary of State of California showing that the applicant is authorized to do business in California. This information is necessary for the Department to determine whether the applicant is permitted to conduct its business in the State of California.
3. A Consent to Service of Process, utilizing the form provided in the Application packet. Service made pursuant to the terms of the consent to service of process shall have the same force and validity as if served personally on the applicant. This form is necessary to enable the Department to accept service of process on behalf of an applicant if the applicant is unable to be located.
4. The name and address of the principal agent in California. This information is necessary in order to provide the Department with a primary contact person in this state who is authorized to act for and on behalf of the applicant.

EXHIBIT L: An affidavit regarding the applicant's knowledge of the California Finance Lenders Law and Rules. Only one responsible officer or director is required to complete this form. This information is necessary to demonstrate that the applicant is familiar with the laws with which the applicant must comply as a licensee.

The Execution Section requests the name, address, title and telephone number of the person who should be contacted for information regarding this Application. Existing law does not require applicants to submit this information to the Department. This information is necessary to provide the Department with a contact person who is authorized to respond to the Department's inquiries, if any, concerning the Application.

This section further sets forth the applicant's declaration, to be signed under penalty of perjury, stating that the applicant agrees to comply with the requirements of the CFLL, rules, and orders as adopted by the Department; and to provide the Department with information concerning changes in officers, directors, or other persons named in the Application. The declaration also states that the person signing the Application is authorized by the applicant to do so, and agrees that the Application and all exhibits not designated as confidential are subject to public inspection. Existing law does not require applicants to submit this information to the Department. This information is needed to ensure that the applicant understands and agrees to comply with the provisions of the CFLL under which the applicant is licensed, and that the applicant agrees to keep the Department informed of changes in officers, directors, and other named persons who may be responsible for operating the applicant's business, to enable the Department to fully evaluate the suitability of such persons under the CFLL.

II. PROPOSAL TO ADD TITLE 10, CHAPTER 3, SECTION 1423 TO THE CALIFORNIA CODE OF REGULATIONS

Section 1423 contains the "Short Form Application for a License Under the California Finance Lenders Law" ("Short Form"). Generally, the Short Form needs to be added to the regulations because it has not been adopted as required by the APA, and is not contained elsewhere in the CFLL or regulations. More specific reasons for the necessity of the provisions in the proposed form are discussed below.

Financial Code Section 22102 provides that a licensee who has one or more licensed locations and is seeking an additional location may file a short form Application as the Department may establish under Section 22101. This rule adopting the Short Form is necessary to ensure that the Department obtains the information needed to determine whether the applicant meets the requirements to obtain a subsequent license using the short form Application, as provided by Section 22102.

Additionally, this rule is necessary to provide CFLL applicants with an efficient means by which they may add additional business locations without duplicating the original application process. The emergency regulation will therefore result in immediate costs savings to applicants, which in turn will enable applicants to more quickly and efficiently add additional business locations and

will provide consumers with more options and greater access to loan products offered by these licensees. The expedited application process will benefit not only applicants and consumers, but also the Department, as the costs of processing the short form applications will be less than if a new complete application was required each time a lender opened a new location.

The information requested in items 1 and 2 of the Short Form relates to general information about the applicant, including the applicant's name and fictitious business name, and the location of the applicant's place of business. Existing law does not require applicants to submit this information to the Department. This general information is necessary to provide a means by which the Department may obtain identifying information about the applicant and information about the location of the applicant's business. (See, e.g., Financial Code Sections 22106 [name of licensee, address, whether applicant is corporation or partnership]; 22153 [change of place of business]; 22154 [business conducted at location where other business is conducted]; and 22155 [name of business].)

Item 3 requests the full name of the individual in charge of the licensee's proposed new business location. Existing law does not require applicants to submit this information to the Department. The requested information is necessary to provide the Department with identifying information about the applicant and about the person in charge of operation and management of the new location, so that the Department can conduct a meaningful investigation of such persons prior to their engaging in business with consumers in this state. The information requested is also necessary to permit the Department to communicate with the individual at the new location. (See Financial Code Sections 22106.)

This individual must also submit a Statement of Identity Questionnaire, unless he or she has previously provided such a form to the Department. Existing law does not require applicants to submit this information to the Department. This information is necessary for the Department to investigate such persons and determine whether the applicant meets the requirements of the CFLL. (See Financial Code Sections 22105.)

Item 4 requests information concerning any change in the applicant's plan of business previously submitted to the Department. Existing law does not require applicants to submit this information to the Department. This information is necessary to inform the Department of the types of loans the applicant proposes to make, and the way in which the applicant proposes to conduct its business, so that the Department can ensure that the applicant is in compliance with, and is conducting its business appropriately under, the CFLL. (See, e.g., Financial Code Sections 22050 through 22061 [exemptions]; 22159 [reports by licensee]; and 22203-22204 [consumer loans].)

Item 5 requests the license number and address of one other CFLL license held by this applicant. Existing law does not require applicants to submit this information to the Department. This information is needed to provide the Department with information concerning the background and qualifications of the applicant based on the information previously submitted to the Department by the licensee and on the applicant's conduct since becoming licensed under the law, thus enabling the Department to fully evaluate the suitability of the applicant for an additional license. (See Financial Code Section 22105.)

Item 6 requests the name, address, title and telephone number of the person who should be contacted for information regarding this Short Form application. Existing law does not require applicants to submit this information to the Department. This information is necessary to provide the Department with a contact person who is authorized to respond to the Department's inquiries, if any, concerning the Application. (See Financial Code Section 22106.)

The Execution Section sets forth the applicant's declaration, to be signed under penalty of perjury, stating that the applicant agrees to comply with the requirements of the CFLL, rules, and orders as adopted by the Department; and to provide the Department with information concerning changes in officers, directors, or other persons named in the Short Form application. The declaration also states that the person signing the Short Form application is authorized by the applicant to do so, and agrees that the Application and all exhibits not designated as confidential are subject to public inspection. Existing law does not require applicants to submit this information to the Department. This information is needed to ensure that the applicant understands and agrees to comply with the provisions of the CFLL under which the applicant is licensed, and that the applicant agrees to keep the Department informed of changes in officers, directors, and other named persons who may be responsible for operating the applicants business, to enable the Department to fully evaluate the suitability of such persons under the CFLL. (See Financial Code Sections 22105 and 22106.)

ALTERNATIVES CONSIDERED

No reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the regulation is proposed, or would be as effective and less burdensome to affected private persons, than the proposed actions. The form prescribed by proposed section 1422 is already in use, and the short form set forth in proposed section 1423 was derived from the longer form.

DETERMINATIONS

The Commissioner has made an initial determination that the proposed regulatory action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.